



DEPARTMENT OF JUSTICE
Antitrust Division

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Re: Request for Business Review Advice - Fair Factories Clearinghouse

Dear Counsel:

This letter responds to your request, on behalf of World Monitors Incorporated and the Fair Factories Clearinghouse ("FFC"), for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You requested a statement of the Department's present enforcement intentions regarding the FFC's proposal to operate a database that member companies can use to collect and voluntarily share information about workplace conditions in manufacturing facilities around the globe ("the FFC initiative").

Your request indicates that the FFC initiative is an organic outgrowth of the activities of the Apparel Industry Partnership ("AIP") and the Fair Labor Association ("FLA") and that those activities were the subject of two previous business review letters issued by the Department. On October 31, 1996, the Department indicated that it would not challenge the AIP's efforts to develop a Workplace Code of Conduct and Compliance Monitoring Procedures provided that various steps were taken by AIP's participants to avoid the exchange among rivals of competitively sensitive information. On April 7, 2000, the Department indicated that it had no

current intention to institute antitrust enforcement action against the implementation of the AIP's Workplace Code of Conduct and Monitoring Principles.

According to your request, the FFC initiative is intended, among other things, to improve the collection and sharing of information relating to factory workplace conditions (e.g., information relating to child labor, forced labor, wages and hours, health and safety, workers' rights, and related issues). You explain that the FFC initiative is designed to put individual companies in a better position to ensure that their suppliers – which typically serve multiple customers – are complying with applicable laws and universally-recognized workplace standards related to the elimination of the use of “sweatshops” in the manufacture of consumer goods. Further, the FFC initiative is intended to educate the public on these issues.

You indicate that the FFC would include many of the same members as the FLA, as well as other large and small participants in the retail industry. Your request notes that FFC membership is contemplated to be open to all retailers and brands. The FFC is considering rules that would make some form of membership available in the future – on an appropriate and non-discriminatory basis – to factories, universities, standard-setting organizations, and buying agents. These entities may receive less access to information than retailers and brands, but all entities in a particular membership class would have access to the same information.

The FFC plans to own and operate a database that member companies can use to maintain and voluntarily share information about workplace conditions. FFC members will have the option, but not the obligation, to contribute information about workplace conditions to the database. The FFC database of “shared” workplace information on factories will consist primarily of information that is collected through audits undertaken or commissioned by member companies. The database will not “rate” factories as good or bad, but will set forth objective information collected by the auditor relating to the terms and conditions of employment, such as wages, use of underage labor, workplace safety, and the like. You have described it as a “decision support tool” to be used by individual FFC member companies in choosing factories from which to source their products. Factories can also submit audits that they commissioned on their own, provided such audits satisfy the requirements of the FFC.

The FFC initiative potentially raises concerns in part because some audits in the database may include certain factories' wage and hour information and because it may facilitate concerted action by FFC members against factories. You respond to these concerns in several ways. First, you describe aspects of the FFC initiative that should protect against anticompetitive effects. Second, you indicate that the FFC will have the procompetitive effect of making the collection and use of information about factory workplace conditions more efficient. Third, you indicate that the FFC initiative will not significantly affect the prices paid by U.S. consumers.

Your request sets forth several aspects of the FFC initiative that, you suggest, will protect against anticompetitive effects. First, the FFC initiative will be entirely voluntary. Each member will decide for itself whether or not to participate, whether to contribute information to the database, and what information to contribute to the database. Second, factories will not have access to competitor wage and hour information in the database, except in an aggregated form that will not enable entity-specific information to be ascertained. Finally, FFC members will be required to comply with its Antitrust Policy Statement, violation of which will be grounds for termination of membership. Among other things, the Policy requires that outside counsel be present at all meetings of the FFC Board and membership and makes clear that all decisions regarding whether

a particular member will use a factory will be made unilaterally by that individual member. Additional antitrust issues would arise if there are discussions among FFC members regarding the content of the audit database or any actions that they might take based on the data, and this business review letter does not indicate the Department's enforcement intentions with respect to such potential activity.

In addition, you indicate that the FFC initiative will make the collection and use of information about factory workplace conditions better and more efficient. Specifically, the database will provide members with a mechanism for sharing audit information regarding facilities from which they source their goods, thus reducing costly, duplicative, and disruptive audits at common production facilities.

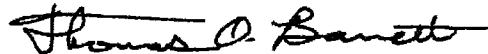
Although not dispositive here, your letter indicates that it is unlikely that the FFC initiative would have an appreciable impact on the prices or output of apparel and footwear products sold in the United States because labor typically accounts for less than 3% of the United States retail price of clothing made in domestic factories and as little as 0.5% for garments sewn abroad. You indicate your belief that the same is true with respect to the *de minimis* relationship between labor costs and the price of other retail and light industry goods manufactured by entities that may ultimately become members of the FFC.

Based on the information and representations that you have provided, the Department of Justice has no current intention to institute antitrust enforcement action against the FFC initiative. Under the circumstances you have asserted, the FFC initiative should yield some cost saving benefits. The initiative is adopting safeguards against the exchange among factories of competitively sensitive information. It is also unlikely that the creation of a database of workplace audit information as described above would by itself have anticompetitive effects through the facilitation of collusion among the customers of the factories being audited.

This letter expresses the Department's current enforcement intentions and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual implementation of the FFC initiative proves to be anticompetitive.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas O. Barnett". The signature is fluid and cursive, with the first name "Thomas" and last name "Barnett" clearly distinguishable.

Thomas O. Barnett
Assistant Attorney General